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contract awarded on or after January 30, 1996.

Person in charge of transfer operations on the vessel is the person designated the person in charge of cargo transfer under 46 CFR 154.1831.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except a minor release of LHG or its vapor, that may occur during the routine handling of LHG. No release is minor if it creates an atmosphere that exceeds the Lower Flammable Limit (LFL) for a flammable product or any Permissible Exposure Limit (PEL) listed in 29 CFR 1910.1000, Table Z-1 or Z-2, for a toxic product.

Substructure means the deck of a pier or wharf and the structural components below that deck.

Toxic product means a product indicated by the letter "T" or by the letters "F+T" in Table 127.005.

Waterfront facility handling LHG means any structure on, in, or under the navigable waters of the United States, or any structure on land or any area on shore immediately adjacent to such waters, used or capable of being used to transfer liquefied hazardous gas, in bulk, to or from a vessel.

Waterfront facility handling LNG means any structure on, in, or under the navigable waters of the United States, or any structure on land or any area on shore immediately adjacent to such waters, used or capable of being used to transfer liquefied natural gas, in bulk, to or from a vessel.

TABLE 127.005—LIST OF PRODUCTS AND HAZARDS

| Product | Hazard |
|---|--------|
| Acetaldehyde | F+T |
| Ammonia, anhydrous | T |
| Butadiene | F |
| Butanes | F |
| Butane and propane (mixtures) | F |
| Butylenes | F |
| Chlorine | T |
| Dimethylamine | F+T |
| Ethane | F |
| Ethyl chloride | F+T |
| Ethylene | F |
| Ethylene oxide | F+T |
| Methyl-acetylene and propadiene (mixtures) .. | F |
| Methyl bromide | F+T |
| Methyl chloride | F+T |
| Propane | F |
| Propylene | F |

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TABLE 127.005—LIST OF PRODUCTS AND HAZARDS—Continued

| Product | Hazard |
|-----------------------|--------|
| Sulphur dioxide | T |
| Vinyl chloride | F+T |

NOTE: "F" indicates a flammable product. "T" indicates a toxic product. "F+T" indicates a product both flammable and toxic.

[CGD 78-038, 53 FR 3376, Feb. 7, 1988, as amended by CGD 88-049, 60 FR 39795, Aug. 3, 1995; CGD 97-023, 62 FR 33363, June 19, 1997]

§ 127.007 Letter of intent and waterway suitability assessment.

(a) An owner or operator intending to build a new facility handling LNG or LHG, or an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling LNG or LHG, where the construction, expansion, or modification would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with a proposed facility or modification to an existing facility, must submit a Letter of Intent (LOI) to the Captain of the Port (COTP) of the zone in which the facility is or will be located. The LOI must meet the requirements in paragraph (c) of this section.

(1) The owner or operator of an LNG facility must submit the LOI to the COTP no later than the date that the owner or operator files a pre-filing request with the Federal Energy Regulatory Commission (FERC) under 18 CFR parts 153 and 157, but, in all cases, at least 1 year prior to the start of construction.

(2) The owner or operator of an LHG facility must submit the LOI to the COTP no later than the date that the owner or operator files with the Federal or State agency having jurisdiction, but, in all cases, at least 1 year prior to the start of construction.

(b) An owner or operator intending to reactivate an inactive existing facility must submit an LOI that meets paragraph (c) of this section to the COTP of the zone in which the facility is located.

(1) The owner or operator of an LNG facility must submit the LOI to the COTP no later than the date the owner or operator files a pre-filing request

with FERC under 18 CFR parts 153 and 157, but, in all cases, at least 1 year prior to the start of LNG transfer operations.

(2) The owner or operator of an LHG facility must submit the LOI to the COTP no later than the date the owner or operator files with the Federal or State agency having jurisdiction, but, in all cases, at least 1 year prior to the start of LHG transfer operations.

(c) Each LOI must contain—

(1) The name, address, and telephone number of the owner and operator;

(2) The name, address, and telephone number of the Federal, State, or local agency having jurisdiction for siting, construction, and operation;

(3) The name, address, and telephone number of the facility;

(4) The physical location of the facility;

(5) A description of the facility;

(6) The LNG or LHG vessels' characteristics and the frequency of LNG or LHG shipments to or from the facility; and

(7) Charts showing waterway channels and identifying commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG or LHG vessels en route to the facility, within at least 25 kilometers (15.5 miles) of the facility.

(d) The owner or operator who submits an LOI under paragraphs (a) or (b) of this section must notify the COTP in writing within 15 days of any of the following:

(1) There is any change in the information submitted under paragraphs (c)(1) through (c)(7) of this section; or

(2) No LNG or LHG transfer operations are scheduled within the next 12 months.

(e) An owner or operator intending to build a new LNG or LHG facility, or an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling LNG or LHG, where the construction, expansion, or modification would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with a proposed facility or modification to an existing facility, must file or update as appropriate a water-

way suitability assessment (WSA) with the COTP of the zone in which the facility is or will be located. The WSA must consist of a Preliminary WSA and a Follow-on WSA. A COTP may request additional information during review of the Preliminary WSA or Follow-on WSA.

(f) The Preliminary WSA must—

(1) Be submitted to the COTP with the LOI; and

(2) Provide an initial explanation of the following—

(i) Port characterization;

(ii) Characterization of the LNG or LHG facility and LNG or LHG tanker route;

(iii) Risk assessment for maritime safety and security;

(iv) Risk management strategies; and

(v) Resource needs for maritime safety, security, and response.

(g) The Follow-on WSA must—

(1) Be submitted to the COTP as follows:

(i) The owner or operator of an LNG facility must submit the Follow-on WSA to the COTP no later than the date the owner or operator files its application with FERC pursuant to 18 CFR parts 153 or 157, or if no application to FERC is required, at least 180 days before the owner or operator begins transferring LNG.

(ii) The owner or operator of an LHG facility must submit the Follow-on WSA to the COTP in all cases at least 180 days before the owner or operator begins transferring LHG.

(2) Contain a detailed analysis of the elements listed in §§127.007(f)(2), 127.009(d), and 127.009(e) of this part.

(h) Until the facility begins operation, owners or operators must:

(1) Annually review their WSAs and submit a report to the COTP as to whether changes are required. The deadline for the required annual report should coincide with the date of the COTP's Letter of Recommendation, which indicates review and validation of the Follow-on WSA has been completed.

(2) In the event that revisions to the WSA are needed, report to the COTP the details of the necessary revisions, along with a timeline for completion.

(3) Update the WSA if there are any changes in conditions, such as changes

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to the port environment, the LNG or LHG facility, or the tanker route, that would affect the suitability of the waterway for LNG or LHG traffic.

(4) Submit a final report to the COTP at least 30 days, but not more than 60 days, prior to the start of operations.

[USCG-2007-27022, 75 FR 29426, May 26, 2010]

§ 127.009 Letter of recommendation.

(a) After the COTP receives the Letter of Intent under §127.007(a) or (b), the COTP issues a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG or LHG marine traffic to the Federal, State, or local government agencies having jurisdiction for siting, construction, and operation, and, at the same time, sends a copy to the owner or operator, based on the—

(1) Information submitted under §127.007;

(2) Density and character of marine traffic in the waterway;

(3) Locks, bridges, or other man-made obstructions in the waterway;

(4) Following factors adjacent to the facility such as—

(i) Depths of the water;

(ii) Tidal range;

(iii) Protection from high seas;

(iv) Natural hazards, including reefs, rocks, and sandbars;

(v) Underwater pipelines and cables;

(vi) Distance of berthed vessel from the channel and the width of the channel; and

(5) Any other issues affecting the safety and security of the waterway and considered relevant by the Captain of the Port.

(b) An LOR issued under this section is a recommendation from the COTP to the agency having jurisdiction as described in paragraph (a), and does not constitute agency action for the purposes of §127.015 or the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

(c) The owner or operator, or a State, local, or Indian tribal government in the vicinity of the facility, may request reconsideration as set forth in §127.010.

(d) Persons other than the owner or operator, or State, local, or Indian tribal government in the vicinity of the facility, may comment on the LOR by submitting comments and relevant

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information to the agency having jurisdiction, as described in paragraph (a), for that agency's consideration in its permitting process.

(e) Paragraphs (c) and (d) of this section apply to LORs issued after December 28, 2012. For LORs issued prior to that date, persons requesting reconsideration must follow the process set forth in §127.015.

[USCG-2011-0227, 77 FR 70890, Nov. 28, 2012]

§ 127.010 Reconsideration of the Letter of Recommendation.

(a) A person requesting reconsideration pursuant to §127.009(c) must submit a written request to the Captain of the Port (COTP) who issued the Letter of Recommendation (LOR), and send a copy of the request to the agency to which the LOR was issued. The request must explain why the COTP should reconsider his or her recommendation.

(b) In response to a request described in paragraph (a) of this section, the COTP will do one of the following—

(1) Send a written confirmation of the LOR to the agency to which the LOR was issued, with copies to the person making the request and the owner or operator; or

(2) Revise the LOR, and send the revised LOR to the agency to which the original LOR was issued, with copies to the person making the request and the owner or operator.

(c) A person whose request for reconsideration results in a confirmation as described in paragraph (b)(1) of this section, and who is not satisfied with that outcome, may request, in writing, the opinion of the District Commander of the district in which the LOR was issued.

(1) The request must explain why the person believes the District Commander should instruct the COTP to reconsider his or her recommendation.

(2) A person making a request under paragraph (c) of this section must send a copy of the request to the agency to which the LOR was issued.

(3) In response to the request described in this paragraph (c), the District Commander will do one of the following—

(i) Send a written confirmation of the LOR to the agency to which the LOR was issued, with copies to the person